

**City of New Castle**  
**Special Council**  
**Wednesday, July 31, 2013**  
**6:00 p.m.**

Present:

Council President William J. Barthel  
Councilperson John Cochran  
Councilperson Teel Petty  
Councilperson Albert Vannucci, Jr.

Absent: Council Person Megginson

Also present: City Solicitor, Dan Losco, Bonnie Arvay DNREC Environmental Scientist III, DNREC / Delaware Coastal Programs

Meeting called to order at 6:00 p.m.

Meeting to discuss and vote on resolution 2013-21 to assume sponsorship of maintenance responsibility for Army Creek Dike to maximize benefit from Army Corps of Engineers dike repair reimbursement program.

Council President Barthel reviewed the purpose of the meeting saying, as we are getting ready to restore the dikes a new issue was brought to the City's attention. That involves the Army Creek dike, of which the City holds half ownership. Because of this dual ownership the City needs to sponsor the maintenance of the Dike. President Barthel asked DNREC Environmental Scientist Bonnie Arvay to update Council on this issue.

Ms. Bonnie Arvay provided background information on the New Castle Dike situation, the Army Corps of Engineers has a Rehabilitation and Inspection program that Dikes and Levees can be entered into which upon acceptance into that program the Corps will help pay for repairs to structures if they are damaged by storm or flood events. The payments are 80% of \$15,000.00 of damage. In order to be eligible for these payments, you need to be active in the program and to be active in the program the structures have to meet certain standards set forth by the Corps and they have to pass regular inspections by the Corps. Those standards include doing regular inspections yourself, and properly maintaining the structures.

Proper maintenance includes activities such as removing unwanted vegetation, controlling animal activity on the Dike, making sure that any erosion events, such as slumping are addressed. Slumping on the front can occur, because of unwanted vegetation, or absence of wanted vegetation. There is vegetation that holds the sides of the slopes in place on the rear sides on the Dikes, and the river side will be primarily rip rock.

Slumping recently occurred at the Buttonwood Dike, the protected side slumped after they put new sediment on the Dike after improving the tide gate, but did not properly vegetate it. So, the entire side fell down or slumped. Good vegetation must be maintained.

Address settlement depressions and cracking and make sure you do not have trash or debris present on the Dike. Currently there is a lot of debris accumulated on Broad Dike and Buttonwood Dike due to the recent severe storms. The City has removed the storm debris from the Gambacorta and Army Creek Dikes.

Previously the City had agreed to sponsor these Dikes within the ACOE program. Each Dike has to have a public sponsor either a City, a County, or a State level sponsor. The State of Delaware is going to assume sponsorship of the Red Lion Dike,

The City had previously agreed to assume sponsorship of the Dikes within its boundaries, including Buttonwood, Broad Dike, and Gambacorta. Broad Dike was previously in the program, it failed its last inspection in 2010 due to overwhelming vegetation and uncontrolled animal burrowing activity. The City was made aware in a letter that those points had to be addressed and corrected and upon correction a letter can be sent to the Corps indicating that the improvements have been made. At that point the Corps will come out and inspect the Dike and if it meets the criteria, it will be reactivated in the program.

The Two new Dikes in the City would be Buttonwood and Gambacorta these Dikes are being designed to meet the current criteria of the Corps. There are two issues; one issue is the Army Creek Dike. This Dike does not lie wholly within the City boundaries; the northern extent of the Dike is owned by the City and is within the boundaries of the City. The Southern extent of the Dike is owned by two corporate bodies. At issue is whether the City will take sponsorship of the Dike, and how the City will go about maintaining the Dike and insuring maintenance occurs on property that is not theirs.

The other principal issue is why there is a need to do this right now. Currently the standards which the Corps has set as their criteria are going to change next year. Since the City started working on this in 2008 FEMA standards for Dikes were set at 10 years plus 2 feet. This represents the flood stage of a 10 year flood event plus 2 feet. Those standards are not changing, but the criteria that FEMA uses for flood stages are going to change. The Dikes have been designed to meet the current standards. Once they change, the Dikes will no longer meet those standards. However, if we can get them active in the Corps program before that we will be perfectly fine as far as meeting the Corps program. The Dikes will all be improved, they will be raised approximately two – three feet, and they will have uniform elevations across, and we will be more protected than we are now.

Once the City indicated that they will sponsor these Dikes the Corps will inspect the Dikes, and indicate that they meet the height criteria, then on subsequent inspections height is not accounted for. You have to meet the height criteria once, and then you are

protected from them on providing that maintenance is continued. If the Dike falls below maintenance standards there may be an issue getting it back into the program without bringing it up to the new height requirement.

President Barthel asked if the ACOE is aware of what we are doing, and that the time limit is not an issue. If, once we take over the Dike, will we be back in the program. Ms. Arvay stated that they are aware of what we are doing, and they would like the City to submit their requests for inspection as soon as possible to insure that as soon as the Dikes are completed and the improvements are finalized they can come out and inspect them right away to make sure they get in before the changes.

The changes are currently not scheduled to take effect before the end of next year, so we have time but we need to get on their budget cycle and we need to get these requests in so they can get these five Dikes on their inspection schedule.

Councilperson Cochran questions that when the Dikes are rebuilt wouldn't they meet the current standards and wouldn't they be inspected at that time.

Ms. Arvay explained that the City, in the sponsorship roll will submit the necessary information to the Corps that they require for completing the approvals. She said that DNREC will help us in that process. The Dykes will be rebuilt, and at that time there will be a "construction" inspection that has nothing to do with the Corps program, they will need to be inspected every year for the program.

Mr. Cochran asked for clarification on the ownership issues of Army Creek Dike. Ms. Arvay stated that the City owns part of Army Creek, and two businesses own parts Jericho and Print-Pack. Councilperson Cochran asked if we would draw them into the process.

Dan Losco addressed several concerns, first budgeting, does the City have a sense of how much routine maintenance and inspections will cost. Additional costs might include, hiring an engineer for inspections, and maintenance issues such as reseeding, and animal control issues. Also, we will need access agreements to the portions of the Army Creek Dike that are not within the City limits, and not on City property.

Councilperson Cochran questioned if we need to contact the two other property owners, and how we could require these two outside businesses to maintain their portion of the Dyke. There will be costs for inspections and maintenance, and we need to get the other owners involved.

Mr. Losco stated that we will have to get them involved; however one of the two parties was in bankruptcy several years ago and may have abandoned this property. Mr. Losco also addressed the need for not only maintenance and inspections, but for record keeping, it will be critical to have records if in the future there is storm related damage to the Dikes.

Councilperson questions Ms. Arvay as to whether there would be training of our City personnel relating to maintenance of the Dikes. Ms. Arvay stated that she is not qualified to train, but there is a State Dam safety engineer, and she will see if that person could walk our people through the steps to identify the issues associated with Dike repairs. Formal inspections will need to be done by a City engineer along with a State engineer. The informal inspections are done by the land owners, and there is a form that needs to be filled out.

Mr. Losco asked if for any reason if a Dike fails a formal inspection, is that structure automatically out of the program, and would then need to be rebuilt to the higher level? Ms. Arvay stated that would not necessarily be the case, the issues would need to be addressed, and inspected again. As in the case of the Broad Dike, it failed its inspection because of overgrown vegetation and animal burrows. Once those issues were addressed the structure can come back into the program. There is no time limit on making the repairs at this time, but the regulations could change.

Mr. Losco asked if there were storm damage, and a portion of the Dike failed, would the entire structure be rebuilt to the higher standards, once they are in place. Ms. Arvay did not know of any regulations at this time that would speak to that, she did say that if there was a breach in one section it would probably be built back to the same level as the surrounding dike; building one section higher would not increase its effectiveness.

Mr. Losco asked if there was damage to one of the Dikes, and the State turned down our application for aid, for whatever reason, would there be any additional fees, or penalties. Ms. Arvay stated that while she cannot speak to what the State may do in the future, at this time, there are not penalties; the City would however be out the maintenance fees, and any additional cost to bring the Dike back into compliance.

Mrs. Petty raised a concern as to sponsorship of the Dike, and how will the City budget the maintenance costs, is there any way to forecast how much the maintenance costs will be. Can the City afford to maintain the Dikes?

Ms. Arvay said she could not forecast how much the City would have to spend, but the State is bearing the cost of bringing the Dikes into compliance, and the City will just be liable for the cost of maintenance and inspections. If the Dikes are maintained, then in the case of a failure, the State will pay 80% of the rebuilding costs. If the City does not maintain the Dikes, then they will be responsible for the whole cost of rebuilding, which would be millions.

Mr. Losco pointed out that taking sponsorship of the Dikes would not require the City to maintain the Dikes, if it was deemed to be cost prohibitive, but accepting sponsorship will get the Dikes into the Army Corps of Engineers program and get them brought up to standard.

Ms. Arvay stated that the State is bearing the cost of repairing the Dikes, but if the City does not maintain them, they will not come back and bring them up to code again, and

the City is in a situation of having to maintain the Dikes not only to stay in the program, but for the safety of the City and its residents. Being in the program is just a safety net, like an insurance policy, in case there is a damaging storm.

Mr. Losco stated that at this time we do have time to investigate the expense, and access agreements. We also have time to look at passing legislation requiring other land owners to contribute to the maintenance costs.

President Barthel called for a Motion to approve Resolution No. 2013-21, to assume sponsorship of maintenance responsibility for Army Creek Dike to maximize benefit from Army Corps of Engineers dike repair reimbursement program. Motion from Councilperson Megginson, 2<sup>nd</sup> from Mr. Cochran.

Resolution passed unanimously.

Motion to adjourn,

**Meeting was adjourned:** 6:50 p.m.

Respectfully submitted,

Kimberly Burgmuller